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William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

VIA FEDERAL EXPRESS

RM 8606

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Dear Mr. Caton:

Enclosed for filing, please find an original and 10 copies of MessagePhone's Comments on the Commission's Request for Comments on CompTel's Filing in the Matter of Billed-Party Preference (CC Docket No. 92-77) Proposing a Rate Ceiling on Operator Service Calls. A copy for each Commissioner is included.

Please acknowledge receipt of this filing by date stamping the extra copy and returning it to MessagePhone in the self-addressed envelope provided.

Sincerely,

Douglas E. Neel
Vice President,
Regulatory Affairs

Enclosures

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and RM-8606

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³ FNPRM at para. 2.

requesting additional comments, this time responding to the above-mentioned Ex Parte proposal⁴ ("Proposal") and Petition for Rulemaking⁵ ("Petition"), both of which recommend alternatives to BPP. As explained herein, these alternatives fall short of the goals set by the Commission and will continue to leave millions of consumers vulnerable to unscrupulous operator service providers ("OSPs"). Based on this record, the Proposal and Petition should be utilized only as interim solutions while BPP technology is being installed.

Prompt and cost-effective implementation of BPP is achievable. MessagePhone has developed a telephone network architecture that is capable of providing BPP for all telephones. This technology provides a cost-effective alternative to the duplication and modification of the existing operator services switches ("OSSs"). Implementation of MessagePhone's architecture will save consumers and telecommunications providers hundreds of millions of dollars.

I. PRICE CAPS AND ADDITIONAL DISCLOSURE FAIL AS PERMANENT SOLUTIONS TO UNFAIR AND DECEPTIVE PRACTICES.

Price caps and additional warnings recommended by the Proposal and Petition will not stop the types of illegal activity and unfair pricing practiced by OSPs. Despite all the past efforts of the U. S. Congress, state legislatures, public utility commissions ("PUCs"), and the Commission, large numbers of consumers continue to be fleeced because unscrupulous OSPs

⁴ Ex Parte Communication submitted by representatives of the Competitive Telecommunications Association ("CompTel"), Bell Atlantic, NYNEX, BellSouth, US West, and the American Public Communications Council ("APCC") proposing a rate ceiling on operator service calls, March 7, 1995.

⁵ Petition of the National Association of Attorneys General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones, RM-8606, February 8, 1995.

simply choose to ignore the rules.⁶ These abuses are described by the thousands of consumer complaints received annually by the Commission and other regulatory agencies, and clearly documented by the letters and study included in Attachments 1 & 2 of the Petition.

The Petition recommends that a voice-over prompt, warning consumers that the rates could be higher than the rates of their preferred carriers, should be played on all operator service calls. Consumers also would be told that they can call a 1-800 number to receive instructions on dialing around the presubscribed carrier. The Attorneys General realize that their approach most likely will be an interim solution used while BPP equipment is being installed.⁷ For several reasons, this solution is incapable of providing the same advantages as BPP and equal access. Consumers will continue to be inconvenienced by having to dial numerous extra numbers instead of immediately accessing their presubscribed service provider. Moreover, the solution ultimately depends on the OSP to implement the voice prompt. Past history has demonstrated that many unscrupulous OSPs simply will not implement the prompt and will continue to block dial-around calls.⁸ Still, the use of an additional warning can be an interim tool for aiding consumers while equal access equipment is being installed.

As another alternative to BPP, the Proposal recommends that the Commission more actively regulate the OSP industry by establishing rate caps. Like the Petition, the Proposal's solution should be considered only as an interim solution, because, ultimately rate caps will not

⁶ See Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. §226) ("TOCSIA"); Policy and Rules Concerning OSPs, Report and Order, CC Docket No. 90-313, 6 FCC Rcd 2744 (1991) ("R&O 90-313").

⁷ See Petition at 5.

⁸ See Private Pay Telephone Survey by the Public Utility Commission of Texas, and see Prepared Testimony of Richard E. Waddell, Staff of the Indiana Office of Utility Consumer (National Association of State Utility Consumer Advocates, FNPRM Comments, Attachment C, August 1, 1994). The Texas Private Pay Telephone Survey demonstrated that 39% of the telephones surveyed and the Indiana survey showed that 89% of the telephones surveyed were still blocking dial-around calls.

provide a viable alternative to the true equal access enabled by BPP. To illustrate, the Proposal incorrectly assumes that OSPs are abiding by current Commission regulations:

It is clear that most of the issues which originally prompted support for BPP, such as blocking, the absence of call branding, a dearth of consumer understanding, and little publicity for the availability of access code calling, have been resolved. These problems no longer provide a basis for adoption of BPP. The only lingering concern is that ... [callers] are charged rates which are excessive.⁹

The Proposal simply ignores the facts. As described supra, growing numbers of OSPs do not correctly label their clients' telephones, do not appropriately or audibly brand telephone calls, and do not provide rate quotes during an appropriate length of time. Even worse, many pay telephones operators still blatantly block callers' attempts to dial around the presubscribed OSP in order to access their carrier.¹⁰

Price caps simply will not stop the types of illegal activity and unfair pricing described in the Petition and by the myriad consumer complaints received annually by the Commission. There is absolutely no evidence to suggest that these very same service providers who block dial-around, garble their company brand to escape accountability, and grossly overcharge consumers for operator services suddenly will abide by new rules and charge rates that fall within the acceptable price cap. Instead, the record indicates that many OSPs simply will ignore rate caps just as they currently ignore other regulatory requirements. Conversely, all of these abuses will be abated once BPP is implemented.

Ironically, the OSPs described in the Petition's Attachments 1 & 2 as violating state and federal regulations and abusing customers -- Oncor, Zero Plus Dialing, Inc., Operator Assistance Network, U.S. Long Distance, CNSI and Amnex -- are the largest and most reputable of the

⁹ Proposal at 5 (emphasis added).

¹⁰ See note 8 supra; also see Petition at 2-4, Attachment 2 at 2.

alternate OSPs.¹¹ Other smaller OSPs are even more likely to engage in the unfair and deceptive practices. This dilemma is exacerbated by the recent growth of small OSPs operating in the United States.

Also of concern, governmental agencies currently do not have the funding or personnel to monitor and pursue the vast majority of these unconscionable OSPs. As a result, the Proposal's price cap recommendation will require extensive increases in the Commission's regulatory oversight of OSP services -- including the tariff review process, service provider monitoring, audit and review of new reports, and action against the OSPs that exceed the adopted rate ceilings. Because ongoing violations of pre-existing rules will not be stopped by rate caps, the Commission must also increase monitoring and enforcement oversight of those activities as well.

The Proposal does suggest that four local exchange carriers ("LECs") graciously volunteered to audit the OSPs for which they provide billing (of course, with assurances of full cost recovery). The Proposal recommends that this responsibility therefore should be delegated to all LECs that provide billing services for OSPs. However, many OSPs do not use LECs to process and deliver their bills. The Commission would have to monitor and audit these carriers. Likewise, once the LECs become regulatory "watch dogs," thus increasing even further the Commission's expenses and responsibilities.

Finally, neither the Proposal or the Petition promotes consumer-focused competition as completely as BPP. Both plans continue to focus competition on premises owners. Clearly, only consumer-focused competition provided by BPP will offer a long-term solution to current abuses by redirecting the focus of competition.

¹¹ I.e., Operator Assistance Network is a division of Electrical Data Systems (commonly known as EDS), a reputable computer consulting company.

II. IMPLEMENTATION OF EQUAL ACCESS FINALLY IS COMPLETED WITH BPP.

Equal access continues to be withheld from an entire class of telephone users, *i.e.*, consumers of public and privately owned pay telephones. Because of this unfortunate policy, the many consumers who use these telephones suffer from the unfair and deceptive practices of unscrupulous OSPs. The state studies mentioned supra demonstrate that a large number of OSPs blatantly violate existing rules and regulations, including rules requiring appropriate signage, timely access to rates, clear branding, and dial-around access to all other OSPs. Because unscrupulous OSPs can hide their identity, rates, and block access to other carriers, they freely charge exorbitant prices for services rendered.¹² Once pay telephone equal access equipment is implemented, consumers will no longer be subject to these abuses and will be able instantly access their pre-selected service provider.

It should be noted that the opponents of BPP repeatedly have used the exact same arguments, reiterated once again in the Proposal, that were used last decade against equal access.¹³ They have suggested that consumers do not want equal access and that the enormous cost of the enabling equipment will drive up the cost of all telephone service. Furthermore, opponents claim that equal access in the form of BPP is unnecessary, especially since AT&T already controls the lion-share of the business and will likely retain its large market share. These arguments were wrong then and are wrong now. Consumers continue to plead with state PUCs and the Commission, by filing record numbers of complaints against unscrupulous OSPs, that they

¹² The Proposal freely admits that, even at telephones that do not block dial-around, anywhere from one-third to two-thirds of consumers still do not dial around the presubscribed OSP in order to reach their carrier of choice -- this despite years of aggressive consumer education! See Proposal at 3 and at note 6. For numerous reasons, millions of consumers will probably never use dial-around and will continue to be at risk unless the Commission mandates BPP.

¹³ Proposal at 1-2.

need and want equal access from pay telephones. Consumers deserve the ease and reliability of equal access. As happened when equal access was originally introduced, prices for operator services will remain stable or could even drop because of the consumer-based competition enabled by BPP. It is a well known fact that, despite the predictions of detractors, after the introduction of equal access for "1+" interexchange traffic, consumer costs dropped by as much as 50%. At the same time, interexchange providers have rapidly upgraded their networks and introduced competitive new services. Pay telephone equal access will spawn a similar outburst of consumer-based competition and services.

III. THE COST TO IMPLEMENT BPP IS SUBSTANTIALLY LESS THAN \$2 BILLION.

The Proposal states that BPP will cost nearly \$2 billion to implement, and that direct LEC expenses will be nearly \$1.7 billion.¹⁴ These cost estimates are outrageously high. In comments filed in response to the FNPRM, MessagePhone described its trunk-side architecture that is capable of providing BPP and other basic and enhanced services. MessagePhone estimated that non-recurring costs of implementing this architecture nationwide would be approximately \$350 million.¹⁵ Costs have gone up slightly but remain less than \$500 million. Even if its original quote was to double, MessagePhone's fixed cost estimate would still be substantially less than the \$1 billion suggested by the Commission and the \$1.7 billion conceived by the Proposal. Accordingly,

¹⁴ Proposal at 2-3.

¹⁵ See MessagePhone FNPRM Comments at 8-23. This cost does not include the cost of upgrading the LECs' end offices to SS7 or OSS7 because MessagePhone's architecture does not require this capability. LECs then can install SS7 and OSS7 in their end offices as the need for new services increases with the advent of local exchange competition and costs can be allocated to the new services as well as to BPP. Additionally, MessagePhone has proposed (and prototyped) two alternative BPP architectures with or without SS7 signaling to the end office. All embodiments are more functional and less expensive than the solution priced by the Regional Bell Operating Companies ("RBOCs") in this proceeding.

cost must not be a deterrent from using BPP to finally implement equal access from pay telephones.

In addition, MessagePhone's line-side technology still is available for offering BPP from LEC-owned and privately-owned pay telephones. This technology is not practical for use with business and residential telephones but it is capable of providing several dozen basic, enhanced and maintenance services for pay telephones. Once the cost of the equipment is allocated between even a few of these services, the cost of BPP drops to approximately \$15-20 million per RBOC. However, MessagePhone realizes that the Commission has tentatively decided to offer BPP on all telephones -- even those already equipped with "1+" equal access. In addition, many LECs have decided to place pay telephone intelligent functionality in the telephone, instead of the Central Office, in order to avoid the ONA/CEI¹⁶ responsibility of providing line-side basic service elements to pay telephone competitors. This trend would preclude many LECs from using all of the services presently available with MessagePhone's line-side technology.

IV. CONCLUSION

The Commission should have mandated BPP two years ago. Because of its inactivity on this issue, consumers continue to be robbed and BPP still is three years away from implementation. Furthermore, the use of additional disclosures and price caps as alternatives to equal access will only postpone a permanent solution. Because they rely on the integrity of each individual OSP for implementation, these solutions will produce the same consumer frustration as

¹⁶

See Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 1991.

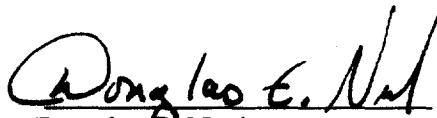
past regulations -- dial around calls will be blocked, calls will be inappropriately branded, and consumers will pay significantly higher rates for services they should have received from their preferred carrier. After these solutions fail, ongoing consumer complaints will finally convince the Commission to mandate pay telephone equal access.

To save U.S. consumers from any more anguish, the Commission should mandate BPP immediately. As an interim measure, either rate caps, additional disclosure, or both should be adopted to at least retard illegal activity and unfair pricing.

Respectfully submitted,

MessagePhone, Inc.

By:

A handwritten signature in black ink, appearing to read "Douglas E. Neel", written over a horizontal line.

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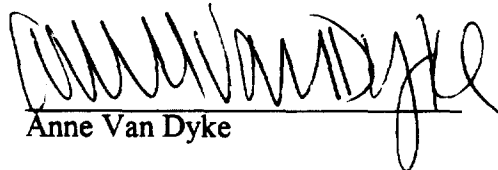
April 12, 1995

Certificate of Service

I, Anne Van Dyke, hereby certify that I have on this eleventh day of April, 1995, sent copies of the foregoing Comments by first-class United States Mail, postage prepaid, to the following:

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